

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

)

Docket No. EL00-62-004, *et al.*

**ANSWER OF MAINE PUBLIC UTILITIES COMMISSION
IN OPPOSITION TO MOTION OF NEPOOL PARTICIPANTS
COMMITTEE FOR CLARIFICATION**

In accordance with Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213 (2000), the Maine Public Utilities Commission (“MPUC”) hereby answers in opposition to the July 13, 2001 Motion for Clarification or, in the Alternative, Request for Rehearing of the NEPOOL Participants Committee (“NEPOOL”) in the captioned proceeding. As set forth below, the Commission should deny NEPOOL’s request that the Commission clarify that the provisions of the Commission’s June 13, 2001 Order discussing ISO New England Inc.’s (“ISO-NE” or “the ISO”) exclusive authority to develop NEPOOL System Rules are limited to the development of those System Rules that are necessary for the ISO to discharge its responsibilities over the transmission planning process. *See ISO New England Inc.*, 95 FERC ¶ 61,384 at 62,438 (2001) (“June 13 Order”).

I. ANSWER

In the June 13 Order, the Commission directed the ISO to revise Section 6.17(b) of the Interim ISO Agreement (“ISO Agreement”) to provide that the “ISO shall have sole responsibility to develop such new System Rules and Procedures as may be necessary to allow the ISO to carry out its obligations under this Agreement.” *Id.* (internal quotes omitted). NEPOOL asserts that this and other portions of the June 13 Order “appear to be susceptible to differing interpretations.” NEPOOL Motion at 5. In this regard, NEPOOL argues that the

directive quoted above should apply only “to the development of those NEPOOL System Rules which are necessary for the ISO to carry out its transmission planning responsibilities.” *Id.* at 7.

NEPOOL makes two principal arguments in support of its motion for clarification regarding the scope of ISO-NE’s authority over Market Rules. First, NEPOOL contends that the modification to Section 6.17(b) of the ISO Agreement ordered by the Commission can only apply to transmission planning issues because the Commission did not make a finding under Section 206 of the Federal Power Act (“FPA”) that any other aspect of NEPOOL/ISO-NE governance was unjust and unreasonable. *See* NEPOOL Motion at 8-10. Second, NEPOOL argues that the scope of ISO-NE’s authority over Market Rules is at issue in other proceedings, and, thus, should not have been considered and decided here. *See id.* at 10-14.

The Commission should reject NEPOOL’s motion for clarification on this issue. While the focus of the Commission’s concern in this case was NEPOOL’s power to compromise ISO-NE’s independence to control transmission planning, the underlying problem that led to the June 13 Order was, and is, NEPOOL control over the ISO’s decisionmaking power. The Commission was well within its discretion to order a remedy that corrected the root problem rather than a narrower Band-Aid solution focused only on transmission planning. There was, as discussed below, sufficient evidence in this proceeding that the existing framework for proposing changes to NEPOOL’s Market Rules was unjust and unreasonable and in need of modification. Indeed, the entire history of the efforts to implement CMS/MSS in New England support a finding that the existing approach is unjust and unreasonable. Moreover, the fact that other proceedings may be considering governance issues is no reason to delay the institution of just and reasonable terms and conditions in *this proceeding*.

A. There Is Sufficient Basis For The Expansion Of ISO-NE Responsibility Over All System Rules

The MPUC does not dispute that the Commission, in modifying the ISO Agreement, is required to find that the existing provisions are unjust and unreasonable pursuant to Section 206 of the FPA. Nor does the MPUC dispute that, in ordering modification of the ISO Agreement here, the Commission did so in the context of its discussion of NEPOOL transmission planning. However, the root cause of the transmission planning problem is ISO-NE's lack of Section 205 filing authority. Having found that Section 6.17 of the ISO Agreement unreasonably compromised ISO-NE's control over planning, the Commission was well within its discretion to adopt a remedy that fixed the problem by ensuring the ISO's independence rather than a narrower remedy that would simply require the Commission to revisit the independence issue when it manifested itself again. Indeed, as the Commission has noted in this docket, the courts have often stated that the Commission's power is "at its zenith" in fashioning remedies for violations of the FPA.¹ The record in this proceeding, moreover, is clearly sufficient to support a Section 206 finding that the current process for modifying NEPOOL System Rules is unjust and unreasonable and should be vested solely in the ISO.

The MPUC, either on its own or through participation in the New England Conference of Public Utilities Commissioners ("NECPUC"), has frequently noted problems with the governance procedures of NEPOOL/ISO-NE.² The current structure often results in gridlock, or, at best, a compromise proposal that is able to garner the requisite percentage of NEPOOL votes

¹ *ISO New England, Inc.*, 95 FERC ¶ 61,174 at 61,562 (2001) (citing *Connecticut Valley Electric Co., Inc. v. FERC*, 208 F.3d 1037, 1044 (D.C. Cir. 2000); *Louisiana Public Service Commission v. FERC*, 174 F.3d 218, 224-25 (D.C. Cir. 1999); *Towns of Concord, et al. v. FERC*, 955 F.2d 67, 72-73, 76 & n.8 (D.C. Cir. 1992); *Niagara Mohawk Power Co. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967). *Accord Gulf Oil Corporation v. FPC*, 563 F.2d 588, 605-06 (3rd Cir. 1977), *cert. denied*, 434 U.S. 1062, *reh'g denied*, 435 U.S. 981 (1978).

² See, e.g., "Motion of the New England Conference of Public Utilities Commissioners to Submit Additional Comments," Docket No. EL00-62-014 (January 18, 2001).

but that may bear little resemblance to the approach that will be of the most benefit to the public interest. The tortured history of the efforts to implement CMS/MSS in New England is perhaps the most frustrating example of these problems.

Efforts to implement CMS/MSS in NEPOOL date back to 1998, when the Commission directed NEPOOL and ISO-NE to develop plans for implementation of a multi-settlement system and to submit those plans concurrently with NEPOOL's revised congestion management plan. *See New England Power Pool*, 85 FERC ¶ 61,379 at 62,462 (1998). By February, 2000, the Commission explained that it shared the frustration of numerous commentators regarding NEPOOL's continued failure to file a comprehensive CMS/MSS proposal. *See New England Power Pool*, 90 FERC ¶ 61,168 at 61,537-38 (2000). In this regard, the Commission directed that a CMS/MSS proposal be filed by March 31, 2000, and directed the ISO to file a proposal if NEPOOL was unable to agree on an approach by that date. *Id.* at 61,538. A filing from NEPOOL was not forthcoming, and, accordingly, the ISO made its own proposal in this docket. *See ISO New England Inc.*, 91 FERC ¶ 61,311 at 62,059 (2000). This experience alone supports a finding that changes to Market Rules should be in hands of the ISO.

In this regard, NEPOOL is incorrect in suggesting that the parties were not provided notice and opportunity to present positions regarding the scope of ISO-NE's authority to develop all NEPOOL System Rules in this proceeding. As explained above, one of the central concerns of both the parties and the Commission throughout the CMS/MSS proceeding has been that NEPOOL's gridlock-inducing decisionmaking procedures were adversely affecting the development of a properly functioning competitive market in New England.

B. The Existence Of Other Proceedings Considering Governance Issues Cannot Prevent The Commission From Implementing Just And Reasonable Terms And Conditions In This Proceeding

NEPOOL suggests that this docket is not the appropriate proceeding to order that Market Rule authority be vested in ISO-NE because “balance of power” issues are being addressed in other pending proceedings. *See* NEPOOL Motion at 10-14. While the Commission may have substantial discretion to manage its case load to promote administrative efficiency, it may not simply decline to formulate a remedy where, as here, the record supports a finding that the current practice is unjust and unreasonable. *See, e.g., Office of Consumers’ Counsel v. FERC*, 783 F.2d 206, 235-36 (D.C. Cir. 1986). Because the record in this docket supports a finding that the current approach to developing and amending NEPOOL System Rules is not just and reasonable, the Commission was correct to apply a remedy in this docket.

II. CONCLUSION

For the reasons set forth above, the Commission should deny NEPOOL’s motion for clarification and make clear that the authority to develop NEPOOL System Rules is vested in ISO-NE.

Respectfully submitted,

Lisa Fink
State of Maine
Public Utilities Commission
242 State Street
18 State House Station
Augusta, ME 04333-0018
(207) 287-1389

By: _____
Harvey L. Reiter
John E. McCaffrey
MORRISON & HECKER L.L.P.
1150 18th Street, N.W.
Suite 800
Washington, DC 20036
(202) 785-9100
(202) 785-9163 (fax)

Attorneys for Maine Public Utilities
Commission

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